

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Service Rules for the 746-764 and)	WT Docket No. 99-168
776-794 MHz Bands, and Revisions to)	
Part 27 of the Commission's Rules)	

To: The Commission

COMMENTS OF VERIZON WIRELESS

Verizon Wireless hereby submits its comments on issues raised by the Commission in its *Further Notice of Proposed Rulemaking* in the above-referenced proceeding.¹

The 700 MHz band represents a crucial opportunity for the United States to advance in the global race to deploy new and innovative mobile and high-speed Internet services. Though nations around the world have followed this country's lead in adopting competitive bidding as the preferred means for awarding spectrum licenses, as far as deploying new spectrum is concerned, the United States is playing catch-up. There is an undeniable spectrum shortage here at home, and as a result, the United States risks falling further behind in wireless innovation and in the development of next generation wireless services. It is therefore crucial that the Commission do whatever it can to make the 700 MHz band usable at the earliest possible date for advanced new wireless services.

With the world, including the Internet, going wireless, capital markets are chasing opportunities to invest in innovative new wireless services. Those opportunities exist abroad, but

¹ See *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 99-168, *et al.*, FCC 00-224 (rel. June 30, 2000) ("*Further Notice*") at paras. 80-105.

they are limited in the U.S. because sufficient spectrum has not yet been made available. In this proceeding, the Commission has a chance to begin to address this problem by adopting policies that will expedite use of the 700 MHz band for new wireless services.

These services, once deployed, will yield benefits to the public by increasing productivity and convenience and intensifying competition among service providers. This potential can only be realized, however, if the band can be cleared of incumbent television broadcasters now occupying channels 59–69. Verizon Wireless appreciates the steps that the Commission has taken in this proceeding to facilitate the process of clearing the 700 MHz band of broadcast stations that now occupy the band, as well as its willingness to consider the issues raised in the *Further Notice*. The Commission must now follow through by adopting policies along the lines described below:

I. The Commission Must Act Expeditiously

Verizon Wireless appreciates the additional time that the Commission has afforded bidders by postponing the 700 MHz auction until March of 2001. In order for this additional time to be used wisely by bidders, the Commission must provide as much certainty as possible as soon as possible regarding the factors that will bear on their business plans.

As Chairman Kennard noted in his statement supporting postponement of the 700 MHz auction until March 2001, “bidder planning for this auction [is] unusually complex.”² In previous auctions of encumbered spectrum, the rules and procedures regarding clearing incumbent users were clear well in advance of the auction. For example, a process for clearing microwave incumbents

² Statement of Chairman William E. Kennard, released July 31, 2000 in connection with Public Notice, “*Auction of Licenses for the 747-762 and 777-792 MHz Band Postponed Until March 6, 2001*”, FCC 00-282 (July 31, 2000).

from the 1.9 GHz band was set in advance of the broadband PCS auctions.³ Conversely, in the MDS and paging auctions, bidders knew well before the auction that incumbent users would continue to have interference protection and would not be cleared. The 700 MHz auction lacks such clarity, but the Commission can bring some degree of clarity and certainty to the process by adopting common sense band clearing and cost sharing policies as outlined below. The sooner these decisions can be made, the better prepared bidders will be for the March 2001 auction. Thus, the issues on which the *Further Notice* seeks comment should be resolved as quickly as possible.

II. Band Clearing

As a general matter, the Commission should remain mindful of the fundamental fact that unless a clear path is found to clearing a substantial number of broadcast stations from the 700 MHz band, this spectrum could remain unusable for a long time. While we applaud the Commission's finding that voluntary band clearing agreements are consistent with the statutory scheme and in the public interest, as well as its adoption of a presumption in favor of regulatory requests necessary to implement such agreements, Verizon Wireless believes that the Commission must do more to facilitate the voluntary band clearing process.

A. Proposals for Secondary Auctions and Three-Way Transition Agreements Are Promising, But Additional Rules Are Needed To Make Them Effective.

The Commission rightfully recognized that negotiated three-way transition agreements and/or secondary auctions conducted on a voluntary basis could produce "significant benefits."⁴ In

³ See *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 92-9, *Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd 6589 (1993), *recon.* 9 FCC Rcd 1943 (1994).

⁴ *Further Notice* at para. 97.

order to achieve these benefits, however, broadcasters must be attracted to participate in these market-oriented mechanisms. The Commission should adopt rules that will create a regulatory environment in which that will take place.

Verizon Wireless would support three-way agreements and secondary auction methods that would expedite the clearing process.⁵ Because a small number of incumbent “holdouts” could ruin the deployment of new 700 MHz services nationally, clearing procedures should be adopted that will encourage broadcasters to participate in an organized, rational clearing process. Without that, holdouts may attempt to extract exorbitant clearing payments, thereby endangering the entire clearing effort.

While any process that would achieve clearing of the 700 MHz band would be welcome, Verizon Wireless is inclined to believe that a coordinated secondary auction process would be more efficient in reaching this result than individualized negotiations in each market in which broadcasters occupy the band. To make a secondary auction process effective, however, Verizon Wireless urges the Commission to adopt the “lone holdout” rule proposed by Spectrum Exchange, which would reduce the opportunity for a single broadcaster to gain a windfall by refusing to participate in a coordinated band-clearing process.

There is ample authority for the Commission to adopt a limited relocation rule. Section 303 of the Communications Act empowers the Commission to “assign frequencies for each individual station and determine the power which each station shall use and the time during which it may

⁵ While we believe that the Commission has the legal authority to conduct a secondary auction of clearing “options” offered by the incumbent broadcasters, we are inclined to believe that a privately conducted secondary auction along the lines proposed by Spectrum Exchange Group, LLC (“Spectrum Exchange”) would be preferable to a government-run options auction.

operate”, and directs the Commission to “encourage the larger and more effective use of radio in the public interest.”⁶ Furthermore, in Section 303(f) of the Act, the Commission is instructed to:

[m]ake such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act: Provided, however, that changes in the frequencies, authorized power, or in the times of operation of any station, shall not be made without the consent of the station licensee *unless the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this Act will be more fully complied with . . .*⁷

These statutory provisions afford the Commission the power to make a public interest finding in the 700 MHz context to support a rule under which a television broadcast station can be ordered to change its channel of operation.⁸ The suggested rule would not conflict with the statutory scheme set up for the transition to digital television⁹ because the relocating station would not be required to cease analog transmissions prior to the end of the statutory transition period.

B. Other Mechanisms Should Be Adopted To Provide Greater Certainty On Band Clearing.

In the recent past, the Commission has required incumbent private operational fixed microwave licensees to relocate from the 2 GHz band to alternative spectrum in order to

⁶ 47 U.S.C. §§ 303(c), (g).

⁷ 47 U.S.C. § 303(f) (emphasis added). Additional authority is found in Sections 4(i) and 303(r) of the Communications Act, which generally empower the Commission to promulgate regulations necessary to fulfill its obligations under, or to carry out the provisions of, the Communications Act. *See* 47 U.S.C. §§ 4(i), 303(r).

⁸ Indeed, this authority supports more rigorous relocation policies than the lone holdout rule urged by Spectrum Exchange. For example, public interest findings that result in channel changes are common in FM allotment proceedings, where in order to allow new service to be instituted, the Commission orders an incumbent station to change its frequency. *See, e.g.,* Walla Walla and Pullman, Washington, and Hermiston, Oregon, *Report and Order*, 13 FCC Rcd 13342 (1998); Ironton, Malden and Salem, Missouri, *Report and Order*, 13 FCC Rcd 6584 (1998); Spring Valley, Minnesota and Osage, Iowa, *Report and Order*, 12 FCC Rcd 15237 (1997); Parris Island and Hampton, South Carolina, *Report and Order*, 12 FCC Rcd 17331 (1997).

⁹ *See* 47 U.S.C. § 309(j)(14), added by P.L. 105-33, approved August 5, 1997, 111 Stat §§251, 3002, 3003.

accommodate the entry of emerging technology services, including broadband PCS and 2 GHz mobile satellite services.¹⁰ In that context, the Commission adopted a definitive time frame for a voluntary negotiation period, with mandatory relocation to follow. In the 700 MHz context, the Commission should incorporate rules into the voluntary negotiation process that would provide some additional certainty.

Unlike the procedures adopted for emerging technologies, the proposals in the *Further Notice* lack the essential component of certainty. None of these proposals offers a date certain by which incumbent broadcasters must clear the band, nor a trigger for 700 MHz licensees to ensure that their negotiations will result in clearing the band. These clearing mechanisms thus could prove less than successful because without firm guidelines, few incentives exist for the parties to reach an agreement.

Therefore, as the Commission develops clearing mechanisms, it should incorporate mandatory provisions that give 700 MHz licensees some control over when they can commence deployment of wireless services. For example, the Commission should give 700 MHz licensees the right to impose involuntary clearing of those channels in conjunction with a technically feasible relocation proposal. The Commission should also consider setting deadlines on incumbent use of Channels 59-69 when relocation channels are available.

These procedures are not inconsistent with the incumbents' right to continue analog service. Section 309(j)(14) does not specify which frequencies incumbents are permitted to use for continued analog service, or under what conditions. On the other hand, the statute requires the Commission

¹⁰ See 47 C.F.R. § 101.69 *et seq.*

to provide direction for the process of reclaiming the incumbents' spectrum. Allowing incumbents prolonged use of these frequencies would be inconsistent with the admonitions in Section 309(j)(14). The Commission should adopt rules with force to avoid the risk of depriving 700 MHz licensees of the value of the spectrum and the public of access to new and innovative wireless services.

C. The Commission Must Set Guidelines Regarding Clearing Costs, As Well As A Cap On Such Costs.

Published reports indicate that some broadcasters expect their compensation for early termination of analog broadcast to be based on the value of the cleared spectrum. Such an approach contravenes the public interest and would, at best, lead to additional delays in the initiation of new wireless service and, at worst, doom the negotiation process. Without clear guidelines on costs, auction revenue that should represent a recovery for U.S. taxpayers on the public spectrum resource will instead be diverted to broadcasters. It is entirely reasonable for broadcasters to expect to be reimbursed for their costs, including some amount for lost advertising revenues if they lose over-the-air viewership. However, a license to broadcast on a commercial allotment is just that — a right to derive revenues from broadcasting. The Commission should not allow television broadcasters to transform their broadcast licenses into something analogous to an ownership interest in the spectrum itself, with the right to extract all of its value.

In prior proceedings establishing procedures for relocation of incumbents, the Commission has found that adopting a cap on relocation costs is justified on several grounds. A cap on costs improves the ability of auction participants to assess the value of licenses, protects cost-sharers from contributing to exorbitant relocation expenses, and reduces disputes over the appropriate amount of

relocation costs.¹¹

The same rationale can be applied to this proceeding. Most, if not all, of the costs of relocating broadcast incumbents are readily identifiable. There are certain "hard costs" of relocation which could be established for use in a cost-sharing mechanism. Initiating a process to identify such costs would be a significant first step in helping broadcasters and 700 MHz auction participants evaluate the spectrum. It would also simplify any cost-sharing procedure among 700 MHz licensees by providing figures from which to calculate the benefit obtained by each licensee.

III. Cost Sharing

Verizon Wireless supports the adoption of cost-sharing rules in cases where the clearing of a particular TV incumbent benefits more than one license holder, whether in the secondary auction or three-way agreement context. Costs should be shared among the winners of both Auction #31 (the 30 MHz auction) and Auction #33 (the guard band auction). All auction winners, regardless of the technology they will employ, will benefit directly or indirectly from the band being cleared, and so all should share in the clearing costs.

It is only reasonable that when multiple parties benefit from a TV station being cleared that all parties share the costs of clearing. The Commission should craft an equitable framework, perhaps based on a MHz-POP analysis taking into account which auction winners benefit from the clearing of a particular channel in a particular area, to apportion the cost-sharing load.

¹¹ *Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, 11 FCC Rcd 8825, 8889 (1996).

IV. Conclusion

Verizon Wireless urges the Commission to act aggressively to the extent of its legal power to create a regulatory environment that will allow voluntary market-oriented clearing mechanisms to succeed. Unless the Commission brings greater clarity to this process, a valuable opportunity to trigger new competition in advanced services could be lost. It is also crucial that the Commission resolve the remaining issues in this proceeding quickly, so that prospective bidders have adequate time to adjust to these new rules and to incorporate them into their business plans and bidding strategies for the March 2001 auction.

Respectfully submitted,

VERIZON WIRELESS

A handwritten signature in dark ink, reading "John T. Scott, III" followed by a stylized "JVC" monogram.

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August 16, 2000